

# Briefing Paper: The Recognition in English Law of Marriages in Embassies or Consulates

Partner Stuart Clark writes a Briefing Paper on The Recognition in English Law of Marriages in Embassies or Consulates.

## Summary

Some Embassies and Consulates in London perform marriages within their buildings in accordance with their own domestic law. Whilst this may be absolutely fine according to the law of the country of the embassy or consulate and fine for the couple concerned for their own law, there is a real risk that this marriage will not be recognised in English law. This may have very significant adverse consequences for the couple concerned.

English law is very liberal in its recognition of foreign marriages. But a ceremony within the territory of England and Wales must comply with English law and marriage procedure in order to be a recognised marriage. For these purposes, weddings in embassies and consulates are treated as if marriages in England. They are not treated as if a foreign marriage and/or according to foreign law.

We have prepared this briefing paper as a guide for embassies and consulates and for individuals as to the recognition in English law of marriages in embassies and consulates in England.

## Why is the recognition of a marriage important?

So often the recognition in England of a marriage is crucial to the spouses. It can be critical in matters such as immigration, tax, state benefits, Wills and inheritances, financial claims upon separation and the parental responsibility of children.

Certain Visas might only be available to spouses; if so, the marriage must be recognised in English law. Tax reliefs and state benefits may only be available to married couples. On the death of one spouse, the other might only stand to inherit their assets if the marriage is recognised in England. The father of a child born in England who is not named on the birth certificate will have parental responsibility for that child if he was married to the mother at the time of the birth. But if that marriage is not recognised in English law, he will not have automatic parental responsibility.

Crucially, in our work, if a couple wish to divorce, and if a spouse wishes to avail themselves of the financial remedies available upon a divorce in English law, they must show a recognisable marriage. If the marriage is not recognised in English law, then there can be no divorce and the spouses cannot avail themselves of the usual financial remedies. This can often lead to extreme hardship for one of them as the couple are treated as being cohabitants rather than spouses. Cohabitation law in England and Wales, as it currently stands confers very limited rights to financial claims and little, if any, rights to ongoing financial support unless there is a child involved.

Conventional marriages conducted in England in accordance with English law will of course be recognised in England. But what of foreign nationals marrying abroad or in embassies or consulates?

## Recognition of Foreign Marriages

First as a comparison, marriages abroad. A marriage performed outside of England and Wales will be recognised in England and Wales so long as first, it is compliant with the laws of that country (the maxim *lex loci celebrationis* applies) and secondly so long as both of the spouses to that marriage had mental and other capacity to enter the marriage and consented to the marriage.

## Embassy or Consular Marriages

What is the position of marriages entered into under the law of a certain country in that country's embassy or consulate but taking place in England? Is it to be treated as if a foreign marriage? A couple may celebrate their marriage in, for example, the Finnish embassy in London in accordance with Finnish law and procedure. In Finland their marriage would be recognised. England would recognise the marriage if they had married in Finland according to Finnish law with full capacity. It may also be recognised in other countries as a Finnish marriage. But would the Finnish marriage in the Finnish Embassy be automatically recognised in England?

The short answer is no. Again, applying the maxim *lex loci celebrationis*; the marriage will be recognised in England only so long as it complies with the law of the country in which the marriage takes place. That country, for these purposes, is England.

Whilst embassies and consular offices enjoy protected status in international law and are inviolable, they remain, for these purposes, buildings located on English soil and in English territory. They are in England.

And so local English law applies for these purposes and in respect of the required formalities for a recognised marriage.

The Vienna Convention on Diplomatic Relations 1961 established the inviolability of foreign embassy and consulates and the rights of duties of sending and receiving states. It did not establish that those offices are foreign land in the receiving country. There is a common misconception that embassies and consulates are extraterritorial lands of the sending state; but this is not correct in English law for purposes such as marriage.

The High Court of England has confirmed on a number of occasions that this is the law in relation to the recognition, or not, of marriages (and divorces) which take place in an embassy or consulate of another country.

In *Radwan* in 1973 the High Court concluded as a matter of private international law that a divorce (in this instance) pronounced in the United Arab Republic (as it then was) consulate did not take place as if in that state but instead took place in England. Whilst accepting the inviolability of the embassy or consulate according to the Vienna Convention, the High Court found that this inviolability did not of itself make the premises a foreign territory outside of England. Commercial transactions, marriages, births and other events are seen to have taken place in England, not in the sending country of the embassy or consulate. The High Court drew on the similar findings of the then authorities in Australia, France, Germany and Italy.

More recently, and directly in relation to marriages, the English High Court in the 2012 case of *Dukali v Lamrani* stated that the marriage of a Moroccan couple who entered into a marriage in the Moroccan Consulate in London celebrated and formalised in accordance with Moroccan law was not recognised in English law. They were, for English law purposes, unmarried. The wife was not able to bring financial claims following their separation.

## English Requirements for marriage

A marriage which takes place in England, even one which takes place in an embassy or consulate, will only be recognised in English law as a valid civil marriage if it complies with the provisions of the Marriage Acts 1949 to 1994. Those Acts include provision for where a marriage is permitted to take place and the requisite notice periods.

Broadly, a marriage in England is only permitted to take place in a Register Office, or approved premises or an approved place of worship. All local Register Offices retain a list of approved premises. Unless an embassy or consulate has registered their premises as approved premises for the purposes of English civil marriages, any marriage taking place there will not be recognised because it is not taking place on approved premises.

Unless the marriage is taking place in the Church of England or Church of Wales, sufficient civil notice must be given by a spouse to the Superintendent Registrar for the locality in which they live. The Registrar must then certify that the marriage can take place. The marriage must then take place in the presence of a Registrar of Marriages or an Authorised Person who will register the marriage and issue a marriage certificate. Again, unless the couple or the embassy or consulate on their behalf give requisite notice and arrange for a Registrar of Marriages or similar authorised person to attend to officiate, it will not be a valid and recognised English marriage.

## What can be done?

If a marriage takes place in an embassy or consulate in England and the spouses want their marriage to be recognised in England, they have at least two options:

- Ensure that the marriage in the embassy or consulate complies not only with the legal requirements of the country of the embassy or consulate in question, but also with English law. This will mean ensuring that the embassy or consulate is an approved premises, that there is a Registrar of Marriages or an Authorised Person present, and that the spouses each provide sufficient notice to and get approval from their local Superintendent Registrar. It would in effect mean parallel or two separate ceremonies, within one overall ceremony; one under the law of the country of the embassy or consulate and the other under English law;
- Either before or after the marriage in the embassy or consulate, get married in accordance with English law. This would mean having a separate ceremony or visiting the English Marriage Registrar formally and legally to undertake and register the marriage in accordance with the formalities required in English law.
- If a marriage has already taken place in an embassy or consulate then our recommendation is to take immediate advice now about whether or not the marriage will be recognised in England. In all likelihood, it will not – unless English marriage requirements were also fulfilled. If so, and the couple still want to remain married in accordance with English law, then they must go through an English civil marriage ceremony. Care should however be taken to ensure that any subsequent marriage does not invalidate the earlier marriage in any other country, including the country in which the original embassy or consulate marriage took place.

Looking further afield, any marriage taking place in any embassy or consulate across the world must be entered into in accordance with the formalities required under the law of the

country in which the embassy or consulate is geographically located. A marriage entered into, for example, in the Ghanaian Embassy in Germany must comply with the German legal formalities if it is to be recognised in England.

Failure to ensure that a marriage is recognised in England can have long term damaging effects including to tax and state benefit entitlements, on death and in the event of a relationship breakdown. Home Office guidance states that couples who were married in an embassy in England (other than in accordance with English law) are not considered to be spouses for immigration purposes. If the couple are not married in accordance with English law, they are treated as cohabitants which means they have very little rights or entitlements against each other on relationship breakdown. In the event of the death of either party, they would not be automatically entitled under some pensions and policies. It is crucial to take early specialist legal advice.

The International Family Law Group LLP is able to provide advice and assistance to individuals, embassies and consulates affected by this issue. Please do not hesitate to contact us at [www.iflg.uk.com](http://www.iflg.uk.com) <sup>[2]</sup> / +44 (0)203 178 5668 / [enquiries@iflg.uk.com](mailto:enquiries@iflg.uk.com) <sup>[3]</sup>

**Stuart Clark** is a Partner at iFLG and has a wide breadth of experience in all issues arising from the breakdown of a relationship but particularly specialises in financial and forum matters. His work involves high net worth individuals with international assets and complicated trust and partnership issues. He is often required to obtain quick advice from a specialist lawyer in another jurisdiction to run concurrently to his cases. Stuart has excellent advocacy skills and he has represented a number of clients in the Family Courts and in the High Court. Stuart is thorough in his approach and has excellent drafting and negotiating skills.

The International Family Law Group LLP is a specialist law firm, based in Covent Garden, London, looking after international and national families with an emphasis on a conciliatory and holistic approach. We are experts in financial and children's matters relating to relationship breakdown, including forum shopping and international enforcement orders. As accredited specialists we receive instructions from foreign lawyers and act for clients of other law firms seeking our expert experience. IFLG has a specialist contract with the Legal Services Commission for child abduction work and is regularly instructed by the UK Government (Central Authority).

IFLG is passionate about making the law more accessible. Our website includes helpful information, such as podcasts, articles, iGuides and website-based applications in a simple question and answer format to guide clients in the right direction towards resolutions. We also have a 24hr emergency contact arrangement. For more information on iFLG go to our website at [www.iflg.uk.com](http://www.iflg.uk.com) <sup>[4]</sup>

Stuart Clark  
[Stuart.Clark@iflg.uk.com](mailto:Stuart.Clark@iflg.uk.com) <sup>[5]</sup>

The International Family Law Group LLP  
www.iflg.uk.com <sup>[4]</sup>  
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**Posted by Stuart Clark** <sup>[11]</sup>

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